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RIGHTS OF PERSONS BELONGING TO NATIONAL, ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES

Written statement by the International Fellowship of Reconciliation, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement which is distributed in accordance with Economic and Social Council resolution 1296 (XLIV)

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FROM BROKEN PROMISES TO REAL MINORITY PROTECTION IN FORMER YUGOSLAVIA[1]

The Pact of Curfu of 1917 and the Treaty of St-Germain-en-Laye of 1919 were fundamental pacts of the Kingdom of Serbs, Croats and Slovenes as the forerunner of former Yugoslavia. Like more modern Yugoslav texts and international conventions, they contained impressive political checks and balances for the multitude of national, ethnic and religious communities involved. Yet, none of these or other framework agreements provided (or are presently planned to provide) for external redress mechanisms which could be triggered reliably and effectively by those directly concerned, e.g. the minorities which might suddenly find themselves outmanoeuvered and deprived of effective protection within the existing State structures. Neglect of fundamental principles and solidarity obligations, of legitimate aspirations and of internationally guaranteed minority rights, both in the course of World War II and in the ill-prepared aftermath of President Tito's death in 1980, eventually upset this delicately balanced Yugoslav social fabric, thus bringing about huge human and material losses - and immeasurable damages to the credibility and legitimacy of the involved international institutions.

Recognition of fundamental principles of the family of nations produced the London Agreement of 1992 - and a record number of Security Council resolutions on the Yugoslav conflict. The Washington Agreement of 1 March 1994, being open to all warring parties, may lead to a newly refounded Confederation of former Yugoslav republics. It seems to reflect a growing recognition on all sides that in our time military might requires diplomatic might, if military gains on the ground are not unavoidably to be lost at the green table, but are to any degree to be transformed into internationally honored useful political realities. But like previous agreements, it may fail to bring a lasting peace if key lessons of the past are ignored, notably:

- "It was a fundamental mistake to recognize the republics of former Yugoslavia *[and one might add the "near abroad" of Russia]* without insisting on reliable, internationally verifiable guarantees for their minorities." *(U.S. Senator Sam Nunn, ABC Meet the Press, 13/2/1994)*
- *If the beneficiaries of such guarantees are to rely on them, they must be able to directly communicate with the institutions - or their successors - in whose name they were issued.*

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[1] This is a follow-up paper to the draft outline of a *minority protection-based interim conflict resolution formula for all of former Yugoslavia* (E/CN.4/Sub.2/1993/NGO/29; S/PV.3336, p.103). It was prepared in cooperation notably with the *Good Offices Group of European Lawmakers* and its research branch, CORUM (POB 2580, 1211 Geneva 2), with the participation of J.Keller, S.Keller, P.Martin, P.Pearson, G.Poulin, F.Ruiz, C.Vieira dos Santos, R.Wadlow, P.Wainwright, A.Zilic and A.Zumach, and with the support of A.Poulin, F.Petracco, D.Hariri, F.Merles, R.Prins-van Westdorpe, E.Querio, A.Vallotton and P.Wiegmann. Its editor, J.A.Keller, is alone responsible for eventual errors and ommissions. He wishes to express his gratitude for the assistance and numerous services provided by the United Nations Office in Geneva, by the director of the United Nations Geneva Library and by the League of Nations archivist and their staff.

1. 74 years ago, the leading advocate for a Greater Serbia, Nicola P.Pasic, Prime Minister of the *Kingdom of Serbia*, and his counterpart at the time, Ante Trumbic, President of the *Yugoslav Committee*, finally reached agreement with the *Pact of Corfu* of 7/20 July 1917[2]:

> "[T]he representatives of the Serbs, Croats and Slovenes declare anew and most categorically that our people constitutes but one nation, and that it is one in blood, one by the spoken and written language, by the continuity and unity of the territory in which it lives, and finally in virtue of the common and vital interests of its national existence and the general development of its moral and material life. The idea of its national unity has never suffered extinction, although all the intellectual forces of its enemy were directed against its unification, its liberty, and its national existence. Divided between several States, our nation is in Austria-Hungary alone split up into eleven provincial administrations coming under thirteen legislative bodies. The feeling of national unity, together with the spirit of liberty and independence, have supported it in the never-ending struggles of centuries against the Turks in the East and against the Magyars in the West.
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> ... All nations which love liberty and independence have allied themselves together for their common defence, to save civilization and liberty at the cost of every sacrifice, to establish a new international order based upon justice and upon the right of every nation to dispose of itself and so organize its independent life; finally to establish a durable peace consecrated to the progress and development of humanity and to secure the world against a catastrophe ...
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> To noble France, who has proclaimed the liberty of nations, and to England, the hearth of liberty, the Great American Republic and the new, free, and democratic Russia have joined themselves in proclaiming as their principle war aim the triumph of liberty and democracy and as basis of the new international order the right of free self-determination for every nation. ...
>
> The authorized representatives of the Serbs, Croats, and Slovenes, in declaring that it is the desire of our people to free itself from every foreign yoke and to constitute itself a free, national, and independent State ..., are agreed in judging that this State should be founded on the following modern and democratic principles: ...
>
> 9. The territory of the Kingdom of the Serbs, Croats, and Slovenes will include all the territory inhabited compactly and in territorial continuity by our nation of the three names. It cannot be mutilated without detriment to the vital interests of the community. ...
>
> In accordance with the right of self-determination of peoples, no part of this territorial totality may without infringement of justice be detached and incorporated with some other State without the consent of the nation itself.
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> 10. In the interests of freedom and of the equal rights of all nations, the Adriatic shall be free and open to each and all.
>
> 11. All citizens throughout the territory of the Kingdom shall be equal and enjoy the same rights with regard to the State before the Law. ..."

2. In the wake of World War I, the *Treaty of St-Germain-en-Laye* of 10 September 1919 (Parry, CTS 226, 182) was concluded between the Kingdom of Serbs, Croats and Slovenes, and the British Empire, France, Italy, Japan and the United States. For many of the peoples who thus found themselves under a new State roof, being covered by international minority protection guarantees was critically important: in case of *"any infraction, or any danger of infraction of any of these obligations"*, the Council of the League of Nations was empowered to *"take such measures and give such directions as it may deem proper and effective in the circumstances"* (article 11, 1919 Treaty).

3. This structure, essentially, was left in place until after President Tito's death. With its resolution 24 (I) of 12 February 1946, the UN General Assembly provided for the *transfer*, from the League of Nations to the United Nations System, of political powers and functions, including minority protection guarantees, rights and obligations. *Proper knowledge* of these rights and mechanisms, and their *competent handling* through *timely direct action by duly empowered and recognized representatives of beneficiaries of these guarantees* - e.g. Serbs of the Krajna - might have prevented much bloodshed in former Yugoslavia and, in the future, might still spare other multi-ethnic peoples from similar tragedies. For the related enforcement mechanism might be activated any time by the General Assembly with a simple majority vote.

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[2] Peace Handbooks, *AUSTRIA-HUNGARY*, vol.II, Foreign Office, London 1920, p.35.

4. The *Washington Framework Agreement* of 1 March 1994 provides for the establishment of a *"Federation in the areas of the Republic of Bosnia and Herzegovina with a majority Bosniac and Croat population"*. Concluded, essentially, between the Governments of the Republics of *Bosnia-Herzegovina* and *Croatia*, it specifies that the *"decisions on the constitutional status of the territories of the Republic of Bosnia and Herzegovina with a majority of Serb population shall be made in the course of negotiations toward a peaceful settlement"*. It also provides for a *"Confederation between the Republic of Croatia and the proposed Federation"*. Other republics of former Yugoslavia may join the planned *Confederation which "shall not change the international identity or legal personality" of any republic of former Yugoslavia*[3].

5. Significantly, and for the first time, all mention of confusing religious terms are avoided, and instead of further using the term Muslim in an ethnic sense, *all citizens of Bosnia-Herzegovina are being referred to as Bosniacs*. Furthermore, this agreement upholds the principles previously agreed to in the *London Agreement* of 1992, principles which have given rise to and are enunciated in numerous Security Council resolutions. Its annex of "human rights instruments incorporated into the constitutional agreement" lists 19 international conventions, but *so far* fails to refer to the 1919 *Treaty of St-Germain-en-Laye*.

6. In its press release *"Platform for a modus vivendi"* of 12 February 1994, the Bosnian Serb "REPUBLIC OF SRPSKA" invoked the 1917 *Corfu Pact* and the *"Treaty of St Germain"*, saying *"some territories may remain as disputed areas under special regime for the time being"*. Perhaps then, the original Republic of Bosnia-Herzegovina, which in many ways resembled the former Kingdom of Serbs, Croats and Slovenes, might be *rebuilt* in particular on the *foundations* laid by the *Corfu Pact* and the *Treaty of St-Germain-en-Laye*. This may be done in as much as the principles thus enunciated are still shared by all Bosniacs (i.e. principally those Bogomils, Croats, Pattarems and Serbs whose family roots are in Bosnia-Herzegovina).

7. The *Washington Agreement* may be a first breakthrough in this direction. Complementary steps might involve a *more effective and trustworthy system of minority protection*[4]. They might significantly contribute to the achievement of a prompt, just and lasting resolution of the underlying conflict in all of former Yugoslavia, including the minority/majority problems notably of the *Albanians in Kosovo and Macedonia*, the *Hungarians in Vojodina* and the *Serbs in Krajna*. The measures thus proposed are:

a) *reactivating* the existing minority protection instruments,
b) *adapting* them to present and foreseeable circumstances in- and outside of the UN, and
c) *complementing* them with *Representatives of Beneficiaries of International Guarantees*.

8. Mandated, at the outbreak of the Yugoslav conflict in June 1991, by the Presidency of the *Yugoslav Chamber of Republics and Provinces*, the *Good Offices Group of European Lawmakers*[5] has looked at the League's *Memel Agreement* of 1924 (LNTS 29, 85), the United

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[3] art.I "Outline of a preliminary agreement on the principles and foundations for the establishment of a Confederation between the Republic of Croatia and the [Bosnia-Herzegovina] Federation"

[4] CHASZAR, Edward, *"The International Problem of National Minorities", University of Pennsylvania*, Indiana 1991. Like lawyers, *Representatives of Beneficiaries of International Guarantees* should be duly nominated by the communities covered by actual or future international guarantees or other League or UN commitments (e.g. for *Bougainville*'s people: E/CN.4/1994/L.93). As such they should *directly* represent their constituents and be called upon to effectively advise all involved UN bodies on related questions. For if such and other guarantees are to be and remain *credible tools for resolving minority, succession and other problems in actual/future trouble spots of the world* (E/CN.4/Sub.2/1992/NGO/27; E/CN.4/Sub.2/1993/NGO/27; E/CN.4/1994/NGO/48), it appears indispensable to strengthen and complement existing conflict resolution mechanisms and pathways with meaningful and reliable instruments which can really make a dent.

[5] comprising in fact also parliamentarians from Asia, Middle East and the United States; for *terms of reference* and background information see: E/CN.4/Sub.2/1993/NGO/29, footnotes 4, 5.

Nations's *Free Territory of Trieste Agreement* of 1947 (UNTS 49, 3), the UN Charter provisions concerning *Trusteeships*, and various other agreements and texts. Already early last year, this parliamentarian group came up with an original plan which is increasingly accepted[6]. Essentially, it provides for an *unprejudicial interim solution covering the illegally occupied, contested or destabilized territories of former Yugoslavia*. These territories, provisionally, would be *administered separately by the United Nations or under its supervision*, based on *bilateral agreements* adapted from the *Free Territory of Trieste Agreement* and reflecting the *international minority protection guarantees* contained in the *Treaty of St-Germain-en-Laye* of 1919. Other elements of this *global lawmakers plan* are:

a) *prompt recognition*, e.g. through a decision by the *International Court of Justice*, that the Security Council's sanctions and embargo decisions concern only States and not "geographical territories", thus making notably the arms embargo resolution 713 (1991) and the economic sanctions resolution 757 (1992) invalid and inapplicable in relation with the Former Yugoslav Republic of Macedonia, the Republic of Bosnia-Herzegovina, the Republic of Croatia and the Republic of Slovenia;

b) *full respect* for and *strict enforcement of the Geneva Conventions of 1949 and the Additional Protocols of 1977* through government troops in government-controlled areas and, outside government-controlled areas, through the Bosnian, Croat and Serb military units operating - *until their eventual dissolution or reintegration into the respective national armies* - under UN control and UN-appointed senior officers in areas assigned to them in accordance with the *gradual re-integration plan* and corresponding *military agreements*;

c) *peace negotiations*, to be sponsored notably by the signatories - and their successors - of the 1919 *Treaty of St-Germain-en-Laye*, i.e. Canada, France, Italy, Japan, United Kingdom and the United States, and involving Albania, Austria, Bulgaria, Germany, Greece, Hungary, Romania, Russia and Turkey (on the basis notably of this treaty's *minority protection provisions* and with due consideration of the *Corfu Declaration* of 1917, with the interim UN administrations effectively in place, and with the *economic sanctions* commensurately lifted);

d) *recognition*, by the General Assembly, of *Representatives of Beneficiaries of International Guarantees* which are to participate in all related negotiations and to advise all involved UN bodies, being duly nominated by the communities covered by actual or future international minority protection guarantees or other League or United Nations commitments; and

e) *development* of a *European travel document*, which is to be issued in the name of the *Council of Europe* by its member governments, and which is to specify the holder's commune(s) of origin or the commune(s) of which he or she is a citizen.

9. All this would seem to be in line with the commendable *Agreement of Washington* of 1 March 1994 and with the observations of *François Léotard*, the French Government Minister:

> *"No European country is based on exclusivity, be it ethnic, religious, racial or others. Many of us worked hard to bring to an end racial Apartheid in South Africa, and we would not live up to our visions and responsibilities if we participated in setting up ethnic or religious Apartheid and ghettos in our midst. We thus cannot and will not accept as permanent a pseudo-solution in the form of a militarily imposed carve-up of Bosnia-Herzegovina which would violate our fundamental values and bear the germs for further conflicts in the Balkan and beyond.*
>
> *Instead, we have to do everything in our power, including the imaginative use of the UN Charter for setting up suitable interim solutions, in order to let the inhabitants of the Republic of Bosnia-Herzegovina to work out their own solutions freely, with their own means and without outside interference. And we should not foreclose the possibility that they may rebuild their exemplary multi-ethnic and multi-religious community and to develop their cultural and economic exchanges within and beyond their internationally recognized borders."* (TF1, 7sur7, 13 February 1994)

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[6] GISCARD D'ESTAING, Valéry, *"Comment sauver la Bosnie"*, Le Monde, 4 février 1994, p.1; multiple official declarations, made since June 1993, by Representatives of the *Government of the Republic of Bosnia-Herzegovina*, calling for a UN Trusteeship for significant parts of its territory; see also: "REPUBLIC OF SRPSKA", *"Platform for a modus vivendi"* of 12 February 1994, op.cit.